



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Gerard Seeley, Jr.
Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
ROYSTER CLARK INCORPORATED
Kinsale Facility
Permit No. VPA 01417**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Royster Clark, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “CAP” means corrective action plan.
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. “Director” means the Director of the Department of Environmental Quality.
6. “Order” means this document, also known as a Consent Special Order.

7. “Royster Clark” means Royster Clark, Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. “Kinsale” means the Royster Clark Facility located on Route 604 & 202 in Westmoreland County, Virginia.
9. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Royster Clark owns and operates the Kinsale facility in Westmoreland County, Virginia. This facility, formerly named Northern Neck Fertilizer Co. and formerly owned by Lebanon Chemical Corporation, was a liquid fertilizer manufacturing/mixing/distribution dealership that also stored crop protection chemicals (insecticides, herbicides, fungicides) onsite for retail sale to farmers. Royster Clark purchased Kinsale on December 14, 1998 and discontinued fertilizer manufacturing activities in 1999. Royster Clark used the facility to store and distribute seeds, but the facility is currently vacant.
2. This facility is the subject of VPA Permit No. VA01417, authorizing the owner to manage pollutants on site in strict compliance with terms, limitations and requirements outlined in the permit. The permit was issued on September 1, 1993, modified on December 29, 1998, to reflect Royster Clark as the new owners, and expired on September 1, 2003. Royster Clark agreed to accept all conditions and requirements of the permit by letter dated December 18, 1998. At the Kinsale facility product was stored in tanks protected by dikes, pads, and sumps to contain stormwater and spillage for reuse. A groundwater remediation program recovers contaminated groundwater to transport to other facilities for use in the fertilizer manufacturing process.
3. On July 6, 1999, the Department issued an Order to Royster Clark requiring that the Kinsale facility comply with a CAP for groundwater remediation that was originally required in a Department Order issued to Lebanon in 1993.
4. On January 15, 2003, the Department conducted an inspection of the Kinsale facility. Department staff reviewed groundwater data and found that pollutants persisted in the groundwater without improvement of conditions because sporadic intermittent pumping of wells on site was not effective in reducing contaminants in groundwater. The groundwater remediation plan and the O&M manual were found to be in need of revision. Royster Clark stated that it implemented the CAP and water quality improvement was observed, but the facility was still unable to meet applicable standards.

5. On March 3, 2003, DEQ received a permit reapplication from Royster Clark for the Kinsale facility. The reapplication included a groundwater monitoring plan to pump 400,000 gallons of groundwater per year and a request to utilize phytoremediation to improve groundwater quality. The Department determined the application was incomplete and informed Royster Clark by letter dated March 5, 2003. The letter requested additional information from Royster Clark by April 5, 2003. Another incomplete application was received on April 8, 2003 and returned by the Department on April 9, 2003. The Permit expired on September 1, 2003. An NOV was issued on October 23, 2003, for failure to re-apply for a permit.
6. The Department met with Royster Clark on November 21, 2003, to discuss the violations at Kinsale. On January 20, 2004, and April 14, 2004, the Department met with Royster Clark to review site characterization data and provide comments on the draft revised CAP for Kinsale. Royster Clark submitted the CAP on June 1, 2004, and a meeting was held on July 19, 2004 to discuss them. Additional revisions to the CAP were submitted on October 29, 2004, and the plan was approved by the Department on November 11, 2004.
7. Royster Clark submitted a VPA permit applications for the Kinsale facility on October 29, 2004, and the application was accepted as complete by the Department on November 9, 2004.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Royster Clark, and Royster Clark agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Royster Clark, and Royster Clark voluntarily agrees, to pay a civil charge of \$2,700 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Royster Clark. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Royster Clark, for good cause shown by Royster Clark, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. In the interest of resolving this matter without delay and expense of litigation Royster Clark agrees to the entrance of this Consent Order, and admits the jurisdictional allegations of the Order, but neither admits nor denies the Findings of Fact or the Conclusions of Law herein.
4. Royster Clark consents to venue in the Circuit Court of the City of Norfolk for any civil action taken to enforce the terms of this Order.
5. Royster Clark declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Royster Clark to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Royster Clark shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Royster Clark shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Royster Clark shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Royster Clark intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Royster Clark. Notwithstanding the foregoing, Royster Clark agrees to be bound by any compliance date that precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. Royster Clark petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Royster Clark.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Royster Clark from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. By its signature below, Royster Clark voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of ~~September~~ 29, 2005.


Robert G. Burnley, Director
Department of Environmental Quality

Royster Clark voluntarily agrees to the issuance of this Order.

By: J. Billy Pihle

Date: August 30, 2005

State of Illinois
Commonwealth of Virginia

City/County of Madison

The foregoing document was signed and acknowledged before me this 30th day of

August, 2005, by J. Billy Pihle, who is
(name)

Managing Director

J.E.S. of Royster Clark, on behalf of the Corporation.
(title)

Cheryl A. Davidson
Notary Public

My commission expires: 12-15-06



APPENDIX A

Royster Clark shall:

1. Off-site wells shall be sampled annually, in accordance with the Department approved CAP. Results shall be submitted to the Department on or before November 11th each year. The first report will be due on November 11, 2005.
2. Within 30 days from the issue date of this Order, place a notice in the deed records informing potential buyers of the environmental issues at the Kinsale Facility. Submit a copy of the confirmation of recording to the Department.

Pursuant to this Order communications regarding this Order, and its requirements shall be addressed as follows:

Frank Lupini
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

Royster Clark shall confirm, in writing, completion of the Order requirements to the above address **within five (5) days of completion**.